

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1763 - SB 1936

February 24, 2014

**SUMMARY OF ORIGINAL BILL:** Creates the *True Origin of Goods Act* (Act) which applies to any person or entity who operates a web site or online service that sells, offers for sale, leases, rents, distributes, directly or indirectly, any of the following goods or services: prescription medications, tobacco products, alcoholic beverages, auto parts. This act also applies to any person who owns or operates a web site or online service dealing in the electronic dissemination of commercial recordings or audio visual works, directly or indirectly, to one or more consumers in this state.

Creates a civil penalty of \$2,500 for failure to clearly and conspicuously disclose correct names, physical address, and telephone number on a web site or online service in a location readily accessible to online users. If the party found to be in violation of this Act does not comply with any permanent injunction, judgment, or court order, a court shall assess against the offending party a civil penalty of no less than \$5,000 and no more than \$10,000 for each day of non-compliance. In addition, a violation of this Act constitutes a violation of the Tennessee Consumer Protection Act, subjecting such defendant to additional penalties and remedies.

Authorizes the Attorney General and Reporter (AG) or a district attorney general of a county in which or from which a violation has occurred, to bring or join in an action in order to enforce compliance of this part, and to recover such applicable statutory damages and attorney's fees.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENT (012672):** Deletes all language after the enacting clause and rewrites the bill creating the *True Origin of Goods Act* (Act) which applies to any person who owns or operates a web site or online service dealing in the electronic dissemination of commercial recordings or audio visual works, directly or indirectly, to one or more consumers in this state.

Creates a civil penalty of \$2,500 for failure to clearly and conspicuously disclose correct names, physical address, and telephone number on a web site or online service in a location readily accessible to online users. If the party found to be in violation of this Act does not comply with

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any permanent injunction, judgment, or court order, a court shall assess against the offending party a civil penalty of no less than \$5,000 and no more than \$10,000 for each day of non-compliance. In addition, a violation of this Act constitutes a violation of the Tennessee Consumer Protection Act, subjecting such defendant to additional penalties and remedies.

Authorizes the Attorney General and Reporter (AG) or a district attorney general (DA) of a county in which or from which a violation has occurred, to bring or join in an action in order to enforce compliance of this part, and to recover such applicable civil penalty and attorney's fees.

Authorizes the AG or DA of a county in which a violation is suspected to have been made to serve one or more subpoenas to retrieve information, upon request of the Division of Consumer Affairs, after the Division cannot ascertain information as required in this Act. A subpoena may be served by anyone authorized to serve process under the Tennessee Rules of Civil Procedure. Before any time specified as the return date on the served subpoena, the person summoned may, in the appropriate chancery court, petition for an order modifying or squashing the subpoena, or a prohibition of disclosure by a court.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- According to the Department of Commerce and Insurance, Division of Consumer Affairs, any additional responsibilities can be handled within existing resources.
- According to the AG, any additional responsibilities can be handled within existing resources.
- A not significant increase in revenue from collection of additional civil penalties assessed will offset any increase in workload to assess such penalties. The net impact is estimated to be not significant.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumption for the bill as amended:

- Additional civil penalties assessed against individuals or business, as a result of this Act, will be minimal, resulting in no significant increase to the business expenses of any such online entity.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/jdb